1.S.B.CIVIL MISC. APPEAL NO.883/2004
Sadhu Singh vs. Oriental Insurance Company and ors.

2.S.B.CIVIL MISC. APPEAL NO.951/2004
LRs of Leelu Ram vs. Sadhu Singh and anr.

DATE OF JUDGMENT ::: 21.3.2006

PRESENT

HON'BLE MR. PRAKASH TATIA, J.

Mr. SP Sharma, for the appellant in appeal no.883/2004

Mr. VK Sharma, for the appellant in appeal no.951/2005.

Mr. UCS Singhvi, for the respondent insurance company.

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At the request of learned counsel for the parties, both these appeals are heard finally.

The facts of the case are that in an accident caused by Sadhu Singh (appellant in S.B. Civil Misc. Appeal No.883/2004), a boy of 10 years died. The claimants were deceased's father, mother and 7 brothers and sisters. The father of deceased died during the pendency of the claim petition. The claimants claimed total compensation of Rs.6,50,000/- whereas the Tribunal after assessing the income of the deceased as Rs.15,000/- per annum, deducted 50% of the amount on account of the expenses which could have been required for the deceased himself, assessed the loss of income to the claimants of Rs.7,500/- per annum. The Tribunal applied multiplier of 15 and thereby

calculated the loss of income of the claimants to be Rs.1,12,500/-. The Tribunal awarded Rs.2,000/- to the mother and Rs.1,000/- each to brothers and sisters for mental agony and for loss of love and affection on account of death of their son/brother. In addition to the above, the Tribunal awarded compensation of Rs.1,000/- against expenses borne by the claimants for taking deceased to the hospital etc. and Rs.2,000/- towards funeral expenses. The Tribunal in all awarded Rs.1,25,500/-. The Tribunal after holding that at the time of accident, the driver of vehicle had the learner's license which is not a valid driving license, exonerated the insurance company.

Hence, the driver cum owner of the vehicle has preferred S.B. Civil Misc. Appeal No.883/2004.

S.B. Civil Misc. Appeal No.883/2004 :-

According to learned counsel for the appellant/owner/driver, the tribunal committed error of law in not considering the appellant's license Ex.A/6 which is though learner's license but is valid driving license issued under the Motor Vehicles Act, 1988 (for short 'the MV Act') and is good for all purposes. It is also submitted that this Court has already taken the view by following the decision of the Hon'ble Supreme Court that the learner's license is valid license to drive the vehicle issued under the provisions of law and, therefore, the insurance company cannot avoid its liability under the contract of insurance.

It is also submitted that the insurance company never

took the defence that the appellant violated any of the conditions of the license as required by the MV Act or required to be followed as per Rule 3 of the Central Motor Vehicle Rules, 1989 (for short 'the Rules of 1989'). It is also submitted that taking of defence by the insurance company is not sufficient but it was a duty of the insurance company to prove by evidence that the appellant violated any condition of the license. Thereafter, the burden would have shifted on the appellant to rebut the allegation. In absence of any allegation, the appellant was not supposed to narrate that he has complied with each and every condition of the license and condition attached by virtue of Rule 3 of the Rules of 1989. Without there being such defence, the Tribunal declared the appellant guilty of not following the Rules.

S.B. Civil Misc. Appeal No.951/2004 :-

This appeal has been preferred by claimants for getting enhancement of the claim. According to learned counsel for the appellants, the Tribunal assessed too low the income of the deceased and thereafter committed serious error of law in deducting 50% of the amount of the said assessed income on account of the expenditure for the deceased himself.

It is also submitted that the Tribunal committed serious error of law by not taking into account the future prospects of earning of the deceased. Apart from this, the Tribunal awarded only Rs.2,000/- to the mother of deceased who lost his son at the age of 10 years only. It is also

submitted that the Tribunal has awarded only Rs.1,000/- to the brothers and sisters which is also low.

Learned counsel for the respondent insurance company vehemently submitted that the appellant was holding the driving license from 16.12.1993 whereas the accident occurred on 11.7.1993, therefore, the Tribunal rightly exonerated the insurance company. It is also submitted that in view of the facts that have come on record, the appellant was not having any skilled person with him while driving the vehicle if he had learner's license, therefore, if the Tribunal has decided on the basis of evidence on record, the Tribunal has not committed any error of law and the driver of the vehicle now cannot say that he was driving the vehicle with the assistance and help of the skilled person as required under Rule 3. It is also submitted that the Tribunal rightly awarded compensation of Rs.2,000/- on account of deprivation of love and affection in view of the fact that the mother of the deceased had total seven children.

I have considered the submissions of learned counsel for the parties and perused the record also.

So far as the driving license is concerned, learner's license is a valid driving license. The insurance company is liable to pay the award amount in such case. The view has been taken by this Court in the case of New India Assurance Co. (The) Ltd. Versus Smt. Jamna Devi and others

reported in RLW 2004(4) Raj. 2483 and in a recent judgment of this Court dated 2.3.2006 in Nethi Ram vs. Smt. Prabhu Devi and ors. (S.B. Civil Misc. Appeal No.59/2004).

It will be worthwhile to mention here that the facts of the case of Nethi Ram (supra) are identical to the facts of this case as in that case also, the owner was driver and had learner's driving license and the Tribunal exonerated the insurance company on the ground of violation of conditions of Rule 3 which is the fact case of the present case also. In the above case, the insurance company did not take a specific stand about the violation of the conditions of license and, therefore, that was not the issue raised by any of the party particularly the insurer before the Tribunal. The same is the situation in the present case. In the present case also, no specific defence of any violation of any specific condition has been taken by the insurance company, rather the defence taken by the insurance company is absolutely vague. By saying that the driver of the vehicle has violated the conditions of license is virtually no defence because of the reason that by this, the driver cannot know which of the condition he has not followed or which of the terms of the license he has violated, is the case against him. Here in this case, the position is more worse as no even a vague defence has been taken by the insurance company of the violation of the conditions of the license or violation of the Rules by the driver. The Tribunal also ignored the learner's license of the appellant, copy of which is placed on record as Ex.A/6, which was issued for the period starting from 17.6.1993 to

16.12.1993 and the accident occurred on 11.7.1993, therefore, the Tribunal committed a serious error in exonerating the insurance company from the liability.

Accordingly, the appeal no.883/2004 deserves to be allowed, hence, allowed and it is held that the insurance company shall be liable to pay the compensation to the claimants or reimburse the same to the owner of the vehicle, as the case may be.

Learned counsel for the appellant/claimants in appeal no.951/2004 rightly pointed out that the Tribunal did not take into account the future prospects of the income of the deceased.

In the facts of the case, future prospects of earning of the deceased to extent of 1/3rd of his assessed income can be reasonable compensation to the claimants. There is no reason for depriving the claimants from this expected income of the deceased. So far as the assessment of income of Rs.15,000/- per annum is concerned, it is a reasonable assessment by the Tribunal. Therefore, the assessment of loss of income to the claimants can be made by adding 1/3rd of income of the deceased in his assessed income which comes to 15,000/- + 1/3rd of 15,000/- = Rs.20,000/- per annum. Out of this 50% of the amount can be deducted in the facts of the case because of the fact that the deceased was 10 years of age only and he had a longer period to settle himself, therefore, the loss of income to the claimants is Rs.10,000/- per annum. The multiplier of 15 has rightly been applied by the Tribunal and hence, the total amount

for the claimants comes to Rs.1,50,000/-. Therefore, it is held that the claimants are entitled to Rs.1,50,000/- in place of Rs.1,12,500/-. The compensation awarded to mother of Rs.2,000/- on account of deprivation of love and affection of her son is virtually no compensation at all and hence, this is increased to Rs.20,000/-. Similarly, the compensation awarded to the brothers and sisters is also increased from Rs.1,000/- to Rs.2,000/-. Rest of the amount awarded by the Tribunal appears to be just and proper. Therefore, the total award amount comes as under :-

Rs.1,50,000/-	Loss of income
Rs.20,000/-	Loss of love of son to claimant mother.
Rs.16,000/-	Loss of love of brother to claimants no.2 to 9.
Rs.1,000/-	Expenses for taking victim to hospital etc.
Rs.2,000/-	Funeral expenses.
Rs.1,89,000/-	Total award amount.

Out of the above amount, Rs.50,000/- has already been paid to the claimants, therefore, the respondents are liable to pay the balance amount of Rs.1,39,000/- to the claimants, out of which Rs.3,000/- for claimants no.2 to 9 each will be deposited in fixed deposit with any nationalised bank. Rest amount may be paid to the claimant no.1. The enhanced amount of the claimant shall carry interest at the rate of 8% p.a. as awarded by the Tribunal for the original award amount.

(PRAKASH TATIA), J.

S.Phophaliya